

JURISDICTION AND VENUE

3. This Court has personal jurisdiction over the Defendant pursuant to Md. Code Ann., Cts. & Jud. Proc. § 6-102(a) because the Defendant regularly transacts business and performs work and services in Maryland.

4. Venue is appropriate in this Court pursuant to Md. Code Ann., Cts. & Jud. Proc. § 6-201(a), because the Defendant carries on a regular business in Harford County, Maryland.

5. Declaratory and injunctive relief is available pursuant to Md. Code Ann., Cts. & Jud. Proc., §§ 3-401, 3-415, and this Court has jurisdiction to enter declaratory and injunctive relief.

STATEMENTS OF FACT

6. This case stems from deceptive sales tactics used by Vivint to entice Mr. Brandon Gorin, to enter a Solar Power Purchase Agreement (“SPPA”) in which Vivint would install its own solar arrays (the “System”) on the roof of the Mr. Gorin’s home at 3 Overbrook Lane, Bel Air, MD, and Mr. Gorin would pay Vivint a stipulated price for all energy produced by the System. Vivint’s salesperson specifically told Mr. Gorin that installation of the System would result in reduced electrical utility bills for Mr. Gorin, but the terms of the SPPA include a 2.9% annual rate increase that causes the monthly usage bills from Vivint to exceed standard electrical utility rates in Maryland.

7. On or about February 2, 2016, Mr. Gorin met with a salesperson from Vivint named Anton Zhirkov at Mr. Gorin’s home in Bel Air to discuss installation of a new System pursuant to a SPPA. On information and belief, Anton Zhirkov did not possess the requisite Maryland Home Improvement Salesperson’s license, in violation of Md. Code Ann., Bus. Reg. § 8-601(b).

8. When Anton Zhirkov discussed the SPPA with Mr. Gorin he told Mr. Gorin the SPPA would result in a significant reduction in his monthly electrical bill.

9. Vivint instructs its salespersons to use deceptive techniques to entice consumers to sign SPPAs by telling prospective customers that the installation of the System will result in increased savings in their energy bills.

10. The Vivint SPPA states that the energy price is 10.5 cents/kWh for the first year of the SPPA, and increased each year by 2.9%.

11. The Vivint SPPA permits Mr. Gorin to buy out the System for \$48,000 after six years.

12. The Vivint SPPA contains clauses that offend Maryland's Commercial Law Article, or are otherwise unconscionable, in the following ways:

- a. The SPPA includes a blanket waiver of rights to reject or revoke acceptance;
- b. The SPPA limits the statute of limitations to one year;
- c. The SPPA excludes express and implied warranties;
- d. The SPPA includes a damages clause that is akin to a confessed judgment because it permits Vivint to obtain a judgment for specific performance without providing proof of damages or posting any bond;
- e. The SPPA unlawfully states that Vivint shall maintain all rights and title to the System, even if a consumer prepays for the System;
- f. The SPPA unlawfully requires consumers to pay a \$499 fee to shut down the System, at Vivint's discretion;
- g. The SPPA unlawfully limits recovery of consequential damages;
- h. The SPPA unlawfully creates an insurance coverage "gap" because Vivint maintains ownership of the System, which is installed on a

consumer's home, but the consumer cannot insure the cost of the System and otherwise bears the risk of loss; and

- i. Vivint unilaterally imposes liquidated damages to consumers that either default on payment or sell their homes to other consumers who have insufficient credit.

13. Vivint intentionally engages in these unfair and deceptive sales tactics by soliciting new business using unlicensed salespersons in the State of Maryland.

14. Since installing the System, Mr. Gorin's electrical bills have, in fact, exceeded standard BG&E charges, and will continue to escalate by 2.9% each year, pursuant to the SPPA escalation clause.

15. Mr. Gorin contested the rate increase with Vivint, and Vivint refused to make any changes to Mr. Gorin's monthly bill.

16. Vivint's exclusion of warranties violates Maryland Consumer Law. Vivint engages in a pattern and practice of promising consumers lower electrical utility bills, while drafting agreements excluding such a promise and other express or implied warranties. Despite the Plaintiff's demand and the terms of the warranty, the Defendant refused to honor the express written warranty. The Defendant's refusal to honor the warranty violates the Federal Magnuson-Moss Warranty Act, 15 U.S.C. § *et seq.*

Specifically, the Magnusson Moss Warranty Act states:

[A] consumer who is damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under this chapter, or under a written warranty, implied warranty, or service contract, may bring suit for damages and other legal and equitable relief . . . 15 U.S.C. § 2310 (d)(1).

17. The SPPA permits Mr. Gorin to buy out the System after six years, but also includes a clause stating that Vivint maintains an interest in the energy produced by the

System even if the consumer prepays the System, with no indication that prepayment after six years would sever Vivint's interest in the electrical output.

18. In or about September 2016, Mr. Gorin learned that the installation of the System caused numerous roof leaks, which Vivint eventually patched several months after Mr. Gorin notified Vivint. The prolonged exposure to leaking weakened attachment points, and resulted in property damage and frustration.

19. The Vivint SPPA also places an encumbrance on Mr. Gorin's home in which any potential buyer of his home must either pass Vivint's credit check, or the System must be paid for prior to sale of the home. Pursuant to the terms of the SPPA, even if the System is paid for, Vivint continues to maintain interest in the energy created by the System.

20. The defects and nonconformities continue to exist and substantially impair the value of Mr. Gorin's home, which is his primary residence, and poses a safety risk due to the increased load on the roof caused by the System and the weakened attachment points.

COUNT I—Breach of Express and Implied Warranties Under the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 Et. Seq.

21. The Defendant fits the definition of "supplier" and "warrantor" as defined in 15 U.S.C. §§ (4), (5).

22. Plaintiff is a "consumer" as defined in 15 U.S.C. § 2301(3); Plaintiff is a "buyer" as defined in 15 U.S.C. § 2301(3) because he is entitled to enforce the terms of the warranties during the term of the SPPA, must pay excise taxes on the System under the SPPA, and can assume payments and purchase rights under the SPPA.

23. Solar Panels are "consumer products" as defined in 15 U.S.C. § 2301(1); the electricity produced by the System is also a "consumer product" as defined in 15

U.S.C. § 2301(1) and under *Singer Co., Link Simulation Sys. Div. v. Baltimore Gas & Elec. Co.*, 79 Md. App. 461, 470–71, 558 A.2d 419, 423–24 (1989).

24. Under Maryland Commercial Law § 2A-214.1 the Defendant may not exclude an implied warranty, and this, by itself, meets the definition of "implied warranty" contained in 15 U.S.C. § 2301 (7).

25. The Defendant breached the implied warranty of merchantability since the System, in view of the nonconformities and Defendant's inability to correct them, was not fit for the ordinary purpose for which the System was used. 15 U.S.C. §§ 2308, 2310 (d).

26. The Defendant breached an express warranty because the cost of the electrical output produced by the System pursuant to the SPPA has exceeded BG&E's electrical utility costs, and will continue to increase for the duration of the SPPA.

27. Pursuant to Maryland Code Ann., Commercial Law § 2A-214.1, a supplier may not exclude an express warranty.

28. The Defendant retains ownership of the Solar Panel component of the System, and enforces the manufacturer's warranty as to defects, component breakdowns, and performance, and promises to enforce those warranties while simultaneously disclaiming them in violation of 15 U.S.C. § 2302(a).

29. The Defendant inconspicuously excluded or limited consequential damages for breach of any warranty and other liability by intentionally concealing these terms in violation of 15 U.S.C. § 2304(a)(3) and Maryland Code Ann., Commercial Law § 2A-214.1(2) and (3).

30. The Defendant's limitation on Mr. Gorin's ability to remedy defects without charge violates 15 U.S.C. § 2304(d).

31. The Defendant's breach of implied warranty has caused substantial damage to the Plaintiff's home, as well as reasonable safety concerns, and has also diminished the value of his home, because subsequent purchasers must either qualify to assume the terms of the SPPA, or pay a default penalty if they do not qualify.

32. Because significant defects arose within the first few months after the System was installed, it would not pass without objection in the trade under the contract description.

33. As a proximate result of Defendant's violations of "the Act" and breach of its warranties, the Plaintiff has been damaged for which the Defendant is responsible. 15 U.S.C. §§ 2304(a) and 2310(d).

WHEREFORE, Plaintiff requests this Honorable Court render a declaratory judgment for the Plaintiff against Defendant for breach of warranty and Order rescission of the Solar Power Purchase Agreement and removal of the entire System installed by the Defendant, and Order an award for actual and consequential damages for \$45,000, and for attorney's fees, costs incurred and court costs, and other assessments proper by law, with legal interest.

COUNT II—Claim for Attorney's Fees Allowed by Law

34. Under Rule 2-703(b) the Plaintiff includes this separately numbered claim for attorney's fees in this initial pleading. Further, under Rule 2-703(d), the Plaintiff advises the Court and the Defendant that he believes this case is likely to result in a substantial claim for attorneys' fees for services over a significant period.

[SIGNATURE ON FOLLOWING PAGE]

Respectfully Submitted,

/s/ Derek A. Hills, Esq.

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Plaintiff demands a trial by jury for all issues so triable.

/s/ Derek A. Hills, Esq.

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